IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2007

CORAM

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No. 761 of 1995

1.Balasubramania Mudaliar
2.Malaikolundu Mudaliar . . Appellants/Plaintiff

Versus

D.Saravanan . . Respondent/Defendant

Prayer: This second appeal is filed against the judgment judgment and decree dated 6.1.94 in A.S.No.5 of 1993 on the file of the Court of the Subordinate Judge, Kancheepuram. (OS No.919/86, dt.14.8.92 on the file of the Court of the Prl.District Munsif,Kancheepuram).

For Appellants :Mrs.Nalinishree for
M/s.S.Viswanathan
For Respondents:No appearance

JUDGMENT

The unsuccessful plaintiffs in both the Courts below are the appellants herein. The suit is filed for declaration and permanent injunction against the defendant.

2.The case of the plaintiffs is that the suit property belonged to one Natesa Mudaliar who by his will dated 21.7.39 has created a trust for the purpose of performing poojas from the income of the suit property after leasing it to the lessees. Out of the seven trustees, five trustees died and the plaintiffs are the only remaining two trustees. It is the case of the plaintiffs that one Arasalai Mudaliar who was the trustee, while alive, was maintaining the property and performing certain temple functions. After his death, it was nine years before, his brother Deivasigamani has continued as a trustee. He also died. Admittedly, the defendant is the son of the said Deivasigamani. The case of the plaintiff is that after the death of the said Deivasigamani, it is only the plaintiffs as surviving trustees

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are entitled to maintain the trust land and therefore the defendant has no right to maintain the properties and it is on that basis the present suit for injunction is filed.

3.Admittedly, as it is seen by the Judgment of both the Courts below, the said Arasalai Mudaliar who is the brother of the defendant's father by Ex.B4 has leased out a property to one Chellappa Naicker in the year 1953 as a trustee. It is also admitted that after the death of Arasalai Mudaliar his brother Deivasigamani has succeeded as trustee. It is against the said succession of the said Deivasigamani who is the father of the defendant, as a trustee, the previous three trustees along with the plaintiffs and one Venkatasa Mudaliar have filed the suit, against the said Deivasigamani and Chellappa Naicker the lessee, in O.S.No.572 of 1964 on the basis that the said Deivasigamani has no right to act as a trustee. As per the judgment dated 26.3.66 marked as Ex.B2, the defendant's father Deivasigamani was held to be a trustee and entitled to maintain the property. It is also seen that as against the said judgment an appeal was filed in A.S.No.260 of 1969 in the Sub Court, Kancheepuram and the judgment in the said appeal was marked as Ex.A4 by which the trial Court Judgment was confirmed. It was thereafter, another suit in O.S.No.487/66 was filed by the first plaintiff along with one Natesa Mudaliar and that was dismissed by the Judgment dated 30.08.2001 marked as Ex.B5. It is seen that Arasalai Mudaliar who was admittedly the trustee, by his will dated 22.9.61 marked as Ex.B6 has nominated his brother Deivasigamani as a trustee and the said Deivasigamani in his turn in his will dated 31.10.82 marked as Ex.B7 has nominated the defendant being his only son to maintain the property.

4.In such circumstances, the same plaintiffs who were the parties in the earlier suit in O.S.No.572/64 filed by them against the defendant's father questioning his right as trustee have come forward to file the present suit for declaration against the defendant on the basis that the defendant is not entitled to act as a trustee.

5.In view of the above said factual position, as it is correctly found by the courts below, by virtue of the judgement in O.S.No.572 of 1964, wherein the plaintiffs are the parties along with the defendant's father Deivasigamani, who was declared to be a trustee based on the will executed by his father Arasalai Mudaliar marked as Ex.B4. In these circumstances, as correctly found by both the courts below, apart from the fact that the suit for declaration against the defendant by treating the defendant as a lessee is not maintainable, the suit is certainly hit by *res judicata* by virtue of the earlier decision in O.S.No.572 of 1964. In these circumstances, the contention raised by the learned

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counsel for the appellants that in the earlier suit only one of the appellants was a plaintiff and therefore the principle *res judicata* will not apply is not sustainable. It is relevant to point out at this stage that the plaintiffs themselves have not represented as individuals but as trustees, as per the original Will as stated above. Therefore the presence of the first appellant in the suit as a trustee itself is sufficient to bind the second appellant also. It is also relevant to point out that the suit itself is for a declaration as a trustee and the second appellant has no independent right as individual.

6.In view of the above facts and circumstances of the case, as correctly found by the Courts below that the earlier judgments are binding on the plaintiffs, the second appeal fails and it is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jikr

To

1.The Subordinate Judge,
Kancheepuram.

2.The Principal District Munsif,
Kancheepuram.

3.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.S.Visvanathan,Advocate Sr 18858

GM (CO)
km/21.4.

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